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IN THE

Supreme Court of the United States

October Term, 1969

No. 898

FRANCIS D. WHITE and GERTRUDE W. WHITE,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

REPLY MEMORANDUM FOR PETITIONERS

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BATAVIA TIMES LAW PRINTERS

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In its memorandum in opposition (p. 3), the Government concedes that a direct conflict exists between the decision of the Second Circuit in the instant case (now officially reported at 417 F. 2d 89) and the decision of the Seventh Circuit in *United States v. Dickerson*, 413 F. 2d 1111 (decided July 28, 1969, rehearing denied Sept. 5, 1969). It asserts, however, that the conflict is not a viable one in view of (1) the current policy of the Internal Revenue Service (IRS) to give "virtually full Miranda warnings"

to taxpayers interviewed by a Special Agent, and (2) the fact that the *Dickerson* decision limited its application to interrogations taking place after the date of the decision in that case.

The Government's present position as to the importance of the issue herein contrasts sharply with its position in its petition for rehearing in *Dickerson*, for, in that petition (pp. 1, 6), the Government asserted that the issue was of such "exceptional importance" as to warrant rehearing *en banc* by the Seventh Circuit. Neither of the points advanced by the Government justifies its change in position, and both were, of course, well known to the Government at the time it filed its petition for rehearing in *Dickerson*. For the reasons stated in our petition for certiorari (pp. 14, 15), we submit that the issue herein is a recurring one of great importance and that the admitted conflict in Circuits should be resolved by this Court.

As to the current policy of IRS, the Government itself concedes (Mem. 4) that IRS is still not giving the full scale *Miranda* warnings in non-custody cases. In these circumstances, the statement in the IRS news release (quoted by the Government in its memorandum, p. 4, *fn.* 2) that its present procedure "goes beyond most legal requirements that are designed to advise persons of their rights" is plainly self-serving and entitled to no weight here. The issue presented here is whether the comprehensive statement of rights set forth in *Miranda* must be given in an interrogation by a Special Agent of the subject of a criminal tax investigation. It is no answer to this question to say that IRS is presently giving most, or "virtually full", *Miranda* warnings. If such a taxpayer is entitled to the *Miranda* warnings, he is entitled to all of them, not simply those which IRS chooses to give.

There is likewise no merit in the Government's contention that the prospective nature of *Dickerson* would make that decision inapplicable to the instant case. The cut-off date established in *Dickerson* applies only to cases arising in the Seventh Circuit. It would be in no way binding on this Court if it should decide to review the instant case. In the event that this Court should decide for the petitioners, the only logical cut-off date would be the date of decision of this Court, assuming, without conceding, that a cut-off date should be established.*

Finally, the Government's assertion (Mem. 4) that "there should be few, if any, future cases which will meet a different fate in the Seventh Circuit than in any other circuit" is wholly insupportable. In the Seventh Circuit, IRS has no choice henceforth but to give the full, comprehensive statement of rights set forth in *Miranda* to every subject of a criminal tax investigation, whether or not the taxpayer is in custody. In all other Circuits, it clearly has no intention of providing the full scale *Miranda* warnings to any such taxpayer who is not in custody. Accordingly, there is no conceivable justification for the statement that most cases will meet no different fate in the Seventh Circuit than in any other. *Campione v. United States* (C. A. 7), pending on petition for certiorari, No. 876, this term, in no way supports the Government's position, for, in *Campione*, not only was an attorney present at the interviews but the essential issue was the very different one of

* This Court has already set its own cut-off date for application of the *Miranda* doctrine, namely, trials commenced after June 13, 1966, the date of the *Miranda* decision. *Johnson v. New Jersey*, 384 U. S. 719 (1966). Since, in our view, the case at bar calls for application, not extension, of the *Miranda* doctrine, we submit that no new cut-off date need be established here. But should one be established, the only logical date would be the date of decision in this case, as we have stated above.

alleged fraudulent misrepresentation as to the nature of the investigation.

Respectfully submitted,

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January, 1970.